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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

At Richmond, APRIL 20, 2000

COMMONWEALTH OF VIRGINIA, *ex rel.*

VIRGINIA LINEN SERVICE, INC.
Complainant

v.

CASE NO. PUE990106

VIRGINIA ELECTRIC AND POWER COMPANY,
Defendant

FINAL ORDER

On March 1, 1999, Virginia Linen Service, Inc. ("Virginia Linen") filed a formal complaint against Virginia Electric and Power Company ("Virginia Power" or "Company") asserting that Virginia Power had failed to meet its obligations under § 56-234.1 of the Code of Virginia.¹ Virginia Linen requested that the Commission direct the Company to apply retroactively Rate Schedule 10 - Large General Service ("Schedule 10") to Virginia Linen's account from August 8, 1996 (i.e., the date Virginia Linen claimed it was entitled to service

¹ The relevant portion of § 56-234.1 states:

It shall be the duty of every public utility, upon written request by the customer, to determine the lowest rate applicable, provided that such public utility shall not be required to make such a determination for any single customer more frequently than annually. If the rate charged thereafter is not such lowest rate applicable, such public utility shall be liable to the customer for the amount of the difference between the amount paid by the customer and the amount that would have been paid if the customer had been charged the lowest rate applicable from and after the customer's request;. . .

under Schedule 10), rather than from the date of Virginia Linen's request for a determination of the lowest applicable rate pursuant to § 56-234.1.²

By Order issued May 19, 1999, the Commission directed Virginia Power to file a response to Virginia Linen by June 9, 1999, and assigned the matter to a hearing examiner.

On June 9, 1999, Virginia Power filed an Answer, a Motion to Dismiss, and a Motion for More Definite Statement. In its Answer, Virginia Power in essence contended that it had fulfilled its obligation under § 56-234.1, and that Virginia Linen's petition failed to state a claim upon which relief could be granted by the Commission. Virginia Power requested that the Commission dismiss Virginia Linen's petition; alternatively, the Company moved that the Commission be required to file a more definite statement of the facts and the legal basis for the relief requested.

By Ruling issued on June 15, 1999, Hearing Examiner Alexander Skirpan, Jr., denied Virginia Power's motions, finding that the pleadings raised questions of fact and that the petition contained sufficient specificity to allow a fair and adequate opportunity to respond. The Hearing Examiner set a public hearing for September 28, 1999, and established a procedural schedule.

The hearing in this matter was held on September 28, 1999, before Hearing Examiner Skirpan. Representing Virginia Linen were John R. Fletcher, Esquire, and Michael B. Hamar, Esquire. John D. Sharer, Esquire, appeared on behalf of Virginia Power, and C. Meade Browder, Jr., Esquire, appeared on behalf of Commission Staff.

On December 14, 1999, the Hearing Examiner issued his report. He found that the facts in this case are not in dispute, and the primary issue in this case is the parties' differing interpretations of § 56-234.1.

² Prior to July, 1996, Schedule 10 was an experimental program available to no more than 200 commercial and industrial customers with a demand above 500 kW. On July 24, 1996, Virginia Power requested that the Commission approve its proposed changes to the schedule to eliminate the restriction on the number of customers who could participate, and remove the term "Experimental" from the rate schedule's title. On August 8, 1996, the Commission administratively accepted the revised schedule, making it available for service rendered after July 24, 1996.

The Hearing Examiner characterized Virginia Linen's interpretation of § 56-234.1 to require a public utility to make a determination, no more than once annually, as to the customer's lowest applicable rate, and when such determination is made, to apply the rate retroactively to the date that the customer became eligible for service under the particular rate (not the date the request for a determination was made). On the other hand, Virginia Power interprets § 56-234.1 to require a utility, upon request, to determine the lowest rate applicable to the customer and, once such determination has been made, the utility's obligations under § 56-234.1 ends until the customer's next request for a determination under § 56-234.1.

The Hearing Examiner agreed with the Company that § 56-234.1 requires public utilities, upon written request of a customer, to make a determination, no more frequently than annually, of the lowest applicable rate for that customer and to apply that rate for all usage subsequent to the customer's request for a determination. The Hearing Examiner found that § 56-234.1 only requires a public utility to refund the difference of what the customer paid since the date of its written request and the amount the customer should have been charged from the date of the customer's request for a determination, and does not require refunds to earlier periods.

Specifically, the Hearing Examiner made the following findings:

- (1) On February 6, 1996, pursuant to § 56-234.1, Virginia Linen provided Virginia Power with a written request for a determination that it was being served under the most economical electric rate schedule;
- (2) On June 6, 1996, Virginia Power correctly determined that Rate Schedule 6 was the most economical electric rate schedule for Virginia Linen;
- (3) On June 14, 1996, Virginia Linen established a peak demand of 595 kW;
- (4) On June 24, 1996, Virginia Power filed revised Rate Schedule 10 with the Commission, replacing Experimental Rate Schedule 10;
- (5) On August 8, 1996, the Commission administratively accepted Rate Schedule 10, making it available for service rendered after July 24, 1996;
- (6) On February 10, 1997, pursuant to § 56-234.1, Virginia Linen provided Virginia Linen with a written request for a determination that it was being served under the most economical electric rate schedule;

(7) On April 29, 1997, Virginia Power determined that use of Rate Schedule 10 could produce savings for Virginia Linen;

(8) On May 22, 1997, Virginia Power offered to apply Rate Schedule 10 for Virginia Linen retroactive to February 10, 1997; and

(9) Va. Code § 56-234.1 does not require retroactive application of Rate Schedule 10 for Virginia Linen to any date before February 10, 1997.

On December 29, 1999, Virginia Linen filed comments on the Hearing Examiner's Report. Virginia Linen contended that the Hearing Examiner's findings and recommendations are not consistent with the purpose of § 56-234.1, which, according to Virginia Linen, is intended to ensure that consumers purchasing electricity from a public utility that enjoys a market monopoly will be afforded the lowest available rate, without burdening the utility. Virginia Linen asserted that the Hearing Examiner's decision would penalize a consumer who does not enjoy a preferential monopoly position nor guaranteed a rate of return in its business operations, and would require the consumer to pay a higher rate than the lowest rate applicable for nearly a year simply by the chance timing of when the consumer makes its request under § 56-234.1. Virginia Linen also contended that the Hearing Examiner's decision assumes that consumers have an obligation to protect themselves by keeping abreast of any notices published by the utility of proposed rate changes and by availing themselves of the opportunity to view the utility's tariffs which are open to public inspection. According to Virginia Linen, there is no evidence that Virginia Power published notice of its proposed changes to Schedule 10; moreover, such notices are frequently difficult to find, and would require businesses to have a full time employee to search for such notices daily. Virginia Linen argued that such a burden on customers is not practical nor consistent with the purpose of § 56-234.1.

Virginia Power also timely filed comments on the Hearing Examiner's Report. The Company contended that the Hearing Examiner had carefully construed the pertinent statutory language and correctly applied his statutory interpretation to the undisputed facts. Virginia

Power urged the Commission to adopt the findings and recommendations of the Hearing Examiner's Report.

NOW THE COMMISSION, upon consideration of the record and the Hearing Examiner's Report of December 14, 1999, the comments and exceptions thereto, and the applicable statutes and rules, is of the opinion and finds that the Hearing Examiner's findings and recommendations should be adopted.

The relevant portion of § 56-234.1 imposes upon public utilities a duty, "upon written request by the customer, to determine the lowest rate applicable" to the customer no more frequently than annually. The section then provides that if the rate charged "thereafter" is not the lowest rate applicable, the utility shall be liable to the customer for the difference between the amount paid by the customer and the amount the customer would have paid if it "had been charged the lowest rate applicable from and after the customer's request." (Emphasis added.) The statute does not impose any obligation on the utility for the period preceding the customer's written request for a determination. Accordingly,

IT IS ORDERED that:

- (1) Virginia Linen's petition is hereby denied.
- (2) There being nothing further to come before the Commission herein, this case shall be dismissed from the docket of active cases.